

By: Kolthorst

S.B. No. 2173

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the operation and administration of the Texas Bullion
3 Depository; depository agents; and to the appropriation of money
4 from the fees, charges, penalties, and other amounts related to the
5 depository and deposited to the general revenue fund for that
6 purpose.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

8 SECTION 1. Section 2116.001(9), Government Code, is amended
9 to read as follows:

10 (9) "Depository agent" means a person licensed in
11 accordance with this chapter to serve as an agent on behalf of a
12 current or prospective [intermediary between the] depository
13 account holder [and a retail customer] in making a retail
14 transaction in precious metals bullion or specie.

15 SECTION 2. Section 2116.002, Government Code, is amended by
16 amending Subsection (a) and adding Subsections (c)-(h) to read as
17 follows:

18 (a) The Texas Bullion Depository is established as a program
19 [an agency of this state] in the office of the comptroller to
20 provide a bullion depository and services for the public benefit
21 relating to bullion, specie, and precious metals.

22 (c) The comptroller may establish a special purpose
23 corporation or other legal entity, with all general corporate
24 powers incident to its operation as a corporate body, to operate the

1 depository for the public benefit and provide related services, as
2 provided by this chapter. The entity has all necessary and implied
3 powers to accomplish the purposes of the entity. The entity is
4 subject to regulation only as provided by this chapter.

5 (d) The depository may adopt and amend articles of
6 incorporation, bylaws, resolutions, and other documents necessary
7 to carry out its purposes.

8 (e) This state and the comptroller may not be held liable
9 for the depository or related activities of the depository. This
10 chapter may not be construed as creating financial or other
11 responsibilities to the state or to the comptroller. This state
12 does not pledge the full faith and credit of this state for the
13 benefit of the depository.

14 (f) The depository may enter into one or more contracts with
15 a vendor to operate the depository or provide any of the
16 depository's services.

17 (g) Notwithstanding Chapter 2113, Government Code, the
18 depository may enter into contracts and engage in marketing, the
19 sale of promotional items, advertising, and other activities to
20 promote the depository. The comptroller may use appropriated funds
21 to pay for activities of the depository authorized under this
22 section.

23 SECTION 3. Section 2116.003, Government Code, is amended to
24 read as follows:

25 Sec. 2116.003. DEPOSITORY ADMINISTRATION; ADMINISTRATOR.

26 (a) The depository is administered as a program [~~division~~] of the
27 office of the comptroller and under the direction and supervision

1 of a bullion depository administrator appointed by the comptroller
2 [~~with the advice and consent of the governor, lieutenant governor,~~
3 ~~and senate~~].

4 (b) The administrator shall:

5 (1) administer, supervise, and direct the operations
6 and affairs of the depository and liaise with depository agents;
7 and

8 (2) liaise with the comptroller and other divisions of
9 the office of the comptroller to ensure that each transaction with
10 the depository that involves state money, that involves an agency,
11 a political subdivision, or another instrumentality of this state,
12 or that involves a private person is planned, administered, and
13 executed in a manner to achieve the purposes of this chapter.

14 (c) The administrator may appoint, subject to the approval
15 of the comptroller, a deputy administrator or other subordinate
16 officer or staff member as necessary and appropriate to the
17 efficient administration of the depository. The depository may
18 contract with the comptroller's office to provide staff support.

19 (d) The administrator, the deputy administrator or another
20 subordinate officer, or a staff member of the depository is not
21 personally liable in the person's private capacity for any act
22 performed or for any contract or other obligation entered into or
23 undertaken in an official capacity in good faith and without intent
24 to defraud in connection with the administration, management, or
25 conduct of the depository, its business, or other related affairs.

26 SECTION 4. The heading to Section [2116.009](#), Government
27 Code, is amended to read as follows:

1 Sec. 2116.009. ACCOUNT BALANCES [~~CAUSE OF ACTION FOR DENIAL~~
2 ~~OF DEPOSIT LIABILITY~~].

3 SECTION 5. Section 2116.009, Government Code, is amended by
4 amending Subsection (b) and adding Subsections (b-1), (b-2), (b-3),
5 and (b-4) to read as follows:

6 (b) The depository shall furnish depository account holders
7 with [~~depository's act of furnishing~~] an account statement or
8 passbook, whether in physical, digital, or electronic form [~~7~~
9 ~~constitutes a denial of liability and the giving of such notice as~~
10 ~~to any amount not shown on the statement or passbook~~].

11 (b-1) The depository account holder is responsible for:

12 (1) promptly examining each account statement
13 received from the depository; and

14 (2) reporting any discrepancy in the account statement
15 to the depository not later than the 60th day after the depository
16 sent the account statement.

17 (b-2) The depository may establish a process to resolve any
18 disputed depository account balance.

19 (b-3) If the depository account holder fails to report any
20 account balance discrepancy reflected on the account balance
21 statement or passbook to the depository within 60 days of the date
22 the depository sent the statement or passbook, then:

23 (1) the depository account holder will be deemed to
24 have accepted the account statement or passbook as accurate;

25 (2) the depository account holder may not dispute the
26 account balance; and

27 (3) the depository shall deem the depository account

1 statement or passbook as accurate and undisputed by the depository
2 account holder.

3 (b-4) The comptroller may adopt rules to implement this
4 section.

5 SECTION 6. Section 2116.010, Government Code, is amended to
6 read as follows:

7 Sec. 2116.010. FEES; SERVICE CHARGES; PAYMENTS; PENALTIES.

8 (a) The comptroller [~~by rule~~] may establish fees, service charges,
9 and penalties to be charged a depository account holder for a
10 service or activity regarding a depository account, including a fee
11 for an overdraft, an insufficient fund check or draft, or a stop
12 payment order.

13 (b) The comptroller may establish other charges and receive
14 payments in the course of depository operations and activities,
15 including from transactions and relationships authorized by
16 Section 2116.021.

17 (c) The comptroller shall deposit revenue realized by the
18 depository under this section to the credit of the general revenue
19 fund.

20 (d) Money credited to the general revenue fund under this
21 section may be appropriated to the comptroller to offset the costs
22 of implementation, administration, promotion, marketing,
23 advertising, and operation of the depository.

24 SECTION 7. Section 2116.021, Government Code, is amended to
25 read as follows:

26 Sec. 2116.021. TRANSACTIONS AND RELATIONSHIPS. The
27 depository may [~~shall~~] enter into transactions and relationships

1 with bullion banks, depositories, dealers, central banks, an IRS
2 approved bank or non-bank acting as custodian for Individual
3 Retirement Accounts, sovereign wealth funds, financial
4 institutions, international nongovernmental organizations,
5 intermediaries, and other persons, located inside or outside of
6 this state or inside or outside of the United States, as the
7 comptroller determines to be prudent and suitable to facilitate the
8 operations of the depository and to further the purposes of this
9 chapter.

10 SECTION 8. Section [2116.023](#), Government Code, is amended by
11 amending Subsection (c) and adding Subsection (d) to read as
12 follows:

13 (c) On receipt of notice of any transaction described by
14 Subsection (a), with respect to all or any portion of the balance of
15 a depository account, the depository shall suspend withdrawal
16 privileges associated with the balances of the depository account
17 until suitable substitute arrangements may be effected in
18 accordance with the representation of the depository by the
19 attorney general and rules of the comptroller to enable the
20 registered account holder to take delivery of the precious metals
21 represented by the account balances in question. A voluntary
22 transfer of a depository account balance or of a depository account
23 among depository account holders may continue to take place
24 unaffected by the suspension, and the depository shall recognize
25 the transfer to the full extent authorized by this chapter, the
26 representation of the depository by the attorney general, and rules
27 adopted under this chapter.

1 (d) On receipt of notice of any transaction described by
2 Subsection (a), the depository shall refer the notice to the
3 attorney general for representation, and the attorney general shall
4 represent the depository in any action related to the notice.

5 SECTION 9. Subchapter A, Chapter 2116, Government Code, is
6 amended by adding Sections 2116.027 and 2116.028 to read as
7 follows:

8 Sec. 2116.027. CONFIDENTIALITY OF RECORDS. (a) Except as
9 otherwise provided by Section 2116.028 and this section, the
10 depository's records are subject to public inspection to the extent
11 authorized by Chapter 552.

12 (b) The following information is confidential and is exempt
13 from disclosure under Chapter 552:

14 (1) records and information related to the
15 depository's physical security, information security, or designed
16 to ensure the integrity and security of the depository including
17 without limitation access codes, passwords, signatures,
18 specifications, technical details, operating procedures,
19 locations, and financial information on expenditures for
20 depository security;

21 (2) records relating to individual accounts or to
22 current or prospective depository account holders that are in the
23 custody of the depository or in the custody of a vendor performing
24 services related to the depository;

25 (3) records related to setting depository fees,
26 service charges, penalties, or other charges or payments;

27 (4) records related to establishing standards under

1 Sections 2116.005(c) and (d); and

2 (5) operational or other information that would give
3 advantage to competitors or bidders.

4 (c) Notwithstanding Subsection (b)(2), depository account
5 information may be disclosed:

6 (1) to a depository account holder regarding the
7 depository account holder's account;

8 (2) to a state or federal agency as necessary to
9 administer the program or as required by applicable law;

10 (3) to a vendor providing services to the depository
11 or to a current or prospective depository account holder;

12 (4) in response to a subpoena issued under applicable
13 law;

14 (5) if compiled as collective information that does
15 not include any identifying information about a person; or

16 (6) with the express written permission of a
17 depository account holder.

18 Sec. 2116.028. INTELLECTUAL PROPERTY. (a) The depository
19 may:

20 (1) apply for, register, secure, hold, and protect
21 under the laws of the United States or any state or nation:

22 (A) a patent for the invention, discovery, or
23 improvement of any process, machine, manufacture, or composition of
24 matter;

25 (B) a copyright for an original work of
26 authorship fixed in any tangible medium of expression, known or
27 later developed, from which it can be perceived, reproduced, or

1 otherwise communicated, either directly or with the aid of a
2 machine or device;

3 (C) a trademark, service mark, collective mark,
4 or certification mark for a word, name, symbol, device, or slogan
5 that the depository uses to identify and distinguish the
6 depository's goods and services from other goods and services; or

7 (D) other evidence of protection or exclusivity
8 issued for intellectual property;

9 (2) contract with a person for the reproduction,
10 public performance, display, distribution, advertising, sale,
11 lease, marketing, licensing, sale, use, or other distribution of
12 the depository's intellectual property;

13 (3) obtain under a contract described in Subdivision
14 (2) a royalty, license right, or other appropriate means of
15 securing reasonable compensation for the exercise of the
16 depository's intellectual property rights; and

17 (4) waive or reduce the amount of compensation secured
18 by contract under Subdivision (3) if the depository determines that
19 the waiver or reduction will:

20 (A) further a goal or mission of the depository;
21 and

22 (B) result in a net benefit to the depository.

23 (b) Intellectual property of the depository is excepted
24 from required disclosure under Chapter 552:

25 (1) beginning on the date the depository decides to
26 seek a patent, trademark, service mark, collective mark,
27 certification mark, or other evidence of protection of exclusivity

1 concerning the property; and

2 (2) ending on the date the depository receives a
3 decision on the depository's application for a patent, trademark,
4 service mark, collective mark, certification mark, or other
5 evidence of protection of exclusivity concerning the property.

6 (c) The comptroller shall deposit revenue realized by the
7 depository under this section to the credit of the general revenue
8 fund.

9 (d) Money credited to the general revenue fund under this
10 section may be appropriated to the comptroller to offset the costs
11 of implementation, administration, promotion, marketing,
12 advertising, and operation of the depository.

13 (e) The comptroller may establish intellectual property
14 policies.

15 SECTION 10. Section 2116.051, Government Code, is amended
16 to read as follows:

17 Sec. 2116.051. USE OF DEPOSITORY AGENTS. The depository
18 shall use private, independently managed firms and institutions
19 licensed as depository agents as intermediaries to conduct retail
20 transactions in bullion and specie on behalf of [~~the depository~~
21 ~~with~~] current and prospective depository account holders.

22 SECTION 11. Section 2116.052, Government Code, is amended
23 to read as follows:

24 Sec. 2116.052. ELECTRONIC INFORMATION SHARING SYSTEMS AND
25 PROCESSES. A [~~The comptroller by rule shall require a~~] depository
26 agent shall [~~to~~] maintain suitable systems and processes for
27 electronic information sharing and communication with the

1 comptroller and the depository to ensure that all transactions
2 effected on behalf of current and prospective ~~[the]~~ depository
3 account holders are reported to and integrated into the
4 depository's records not later than 11:59:59 p.m. on the date of
5 each transaction.

6 SECTION 12. Section 151.002(b)(9-c), Finance Code, is
7 amended to read as follows:

8 (9-c) "Depository agent services" means services
9 rendered ~~[to the general public]~~ for or on behalf of current or
10 prospective depository account holders of the Texas Bullion
11 Depository in the nature of purchasing, selling, transferring,
12 accepting, transporting, delivering, or otherwise dealing in
13 precious metals bullion or specie in connection with the creation,
14 transfer, clearing, settlement, or liquidation of the rights and
15 interests of a depository account holder and a direct or indirect
16 transferee of a depository account holder, as those terms are
17 defined by Subchapter J. The term "depository agent services" does
18 not include:

19 (A) participation as a party or counterparty to a
20 transaction, including an agreement with respect to a transaction,
21 in or in connection with a contract for the purchase or sale of a
22 person's rights and interests as a depository account holder, as a
23 cash contract for present delivery, a cash contract for deferred
24 shipment or delivery, or a contract for future delivery, where the
25 underlying deliverable consists of the depository account holder's
26 interest in the depository account, rather than the underlying
27 precious metal represented by the depository account balance;

1 (B) the opening, transfer, settlement, or
2 liquidation of any derivative of a contract described by Paragraph
3 (A), including a forward transaction, swap transaction, currency
4 transaction, future transaction, index transaction, or option on or
5 other derivative of a transaction of any of those types, in the
6 nature of a cap transaction, floor transaction, collar transaction,
7 repurchase transaction, reverse repurchase transaction,
8 buy-and-sell-back transaction, securities lending transaction, or
9 other financial instrument or interest, including an option with
10 respect to a transaction, or any combination of these transactions;
11 or

12 (C) the rendition of services exclusively in
13 support of the opening, transfer, settlement, or liquidation of
14 transaction derivatives described by Paragraph (B) through a
15 central counterparty, such as those customarily rendered by a
16 clearinghouse, clearing association, or clearing corporation, or
17 through an interbank payment system, physical or electronic trading
18 facility, broker or brokerage firm, or similar entity, facility,
19 system, or organization.

20 SECTION 13. Section 151.858, Finance Code, is amended to
21 read as follows:

22 Sec. 151.858. LIABILITY OF LICENSE HOLDER. A depository
23 agent license holder is liable for the delivery to or for the
24 depository account of [~~the depository or~~] each current or
25 prospective depository account holder [~~depositor~~], as applicable,
26 of all bullion, specie, and money payable or deliverable in
27 connection with the transactions in which the license holder

1 engages on behalf of the current or prospective depositor who is
2 entitled to depository agent services.

3 SECTION 14. Sections 2116.009(a), (c), (d), (e), and (f),
4 Government Code, are repealed.

5 SECTION 15. If, on or before September 1, 2017, the
6 Comptroller has not appointed the bullion depository administrator
7 required by Section 2116.002, as amended by this Act, all rights,
8 duties, powers, obligations, and other requirements established by
9 this Act and Chapter 1000 (H.B. 483), General Laws, Acts of the 84th
10 Legislature, Regular Session, 2015, are transferred to the General
11 Land Office.

12 SECTION 16. This Act takes effect immediately if it
13 receives a vote of two-thirds of all the members elected to each
14 house, as provided by Section 39, Article III, Texas Constitution.
15 If this Act does not receive the vote necessary for immediate
16 effect, this Act takes effect September 1, 2017.